IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.1456 of 1994
Date of Decision.04.07.2012

Krishan Kumar son of Shri Man Singh, resident of village Kalampura, Tehsil and District Karnal.

.....Appellant

Versus

Om Parkash son of Ganesh Dass, r/o 145B, Model Town, Sonepat (driver of truck No.HRS 1897) and others

.....Respondents

Present: Mr. Vikram Singh, Advocate
for the appellant.

None for respondent Nos.1 and 2.

Mr. Neeraj Khanna, Advocate and
Mr. Ravinder Arora, Advocate
for respondent No.3.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? No
2. To be referred to the Reporters or not ? No
3. Whether the judgment should be reported in the Digest? No

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K. KANNAN J.(ORAL)

1. The appeal is against the dismissal of the petition claiming compensation for injury sustained in a motor accident. The claimant was the driver of the canter vehicle, which dashed against a truck going ahead of him. The contention of the petitioner was that the truck was being driven rashly and negligently and since he had applied the brake without any prior indication, he could not stop although the vehicle was being driven 15 paces behind. Consequently, the collision had taken place and the driver of the truck had taken entire responsibility of the accident. The Tribunal reasoned that if it was a case of collision of the canter with the truck going in front of him even if truck had suddenly braked, the driver of the canter must have taken sufficient care and circumspection to avoid the collision. If there was a collision, it ought to be, therefore, understood only a wholly negligent act on

the part of the driver of the canter namely the petitioner himself. Although the Tribunal determined the compensation payable at Rs.95,442.60 for the injury suffered that included the expenses for hospitalization and for disability, the Tribunal proceeded to dismiss the petition consistent with its finding that the petitioner himself was a tort feasor. Learned counsel for the appellant would contend that if the petitioner's evidence were to be accepted that the collision had happened only by the sudden braking of the vehicle going in front of him, it ought not to be seen that he was himself responsible for the accident.

2. There was surely an element of negligence on the part of the driver of the truck and it was his fast driving and sudden braking that resulted in collision. The driver of the truck has examined himself as RW-1 and he has given his own version about how he could not be responsible in a situation where the vehicle come from behind was dashing at the rear portion of the truck. I cannot agree with the reasoning adopted by the Tribunal that in all cases where a collision takes place and a vehicle coming behind yet another vehicle dashed against the vehicle going in front, the entire negligence must be attributed only to the vehicle coming behind. It would amount to completely discarding the evidence given by the petitioner, who had cogently spoken about the fast and negligent driving of the driver and the sudden braking. I would take this to be a case of contributory negligence where a higher share of responsibility must be taken by the petitioner himself. I would apportion the liability between the driver of the truck and the petitioner to the extent as 40:60. Consequently in the manner of assessment, there shall be an abatement to the extent of 60% for the liability to the accident.

2. In the manner in determination of compensation for injuries, the Tribunal had before it evidence that the petitioner had suffered fracture of nasal bone, maxilla of right and left femur for which K-nailing operation had

been done on the right tibia. There had been evidence that the petitioner had been hospitalized and was treated as an inpatient for one and half months. The Tribunal had provided for the entire hospital expenses and the cost of medicines and also had provided for a claim for permanent disability caused on account of the foot drop resulting from the injuries and shortening of leg that had occurred by reduction of K-nailing. On the other hand, for the 4 fractures, which the petitioner had suffered no compensation at all had been assessed for pain and suffering which I would estimate at Rs.20,000/-. No provisions had been made for special diet, hospitalization and subsequent period for convalesce nor any provision was made for transportation. I would make a further provisions of Rs.10,000/- for the same. With the addition of Rs.30,000/-, the amount determinable would be Rs.1,25,442/-, which I would round off to Rs.1,25,500/-. After making an abatement of 60% for his own negligence, the amount of compensation payable would be Rs.50,200/-. This amount shall also bear interest @6% from the date of petition till the date of payment. The liability shall be on the insurer of the truck namely the Oriental Insurance Company arrayed as the 3rd respondent in the petition.

3. The award stands modified and the appeal is allowed to the above extent.

(K. KANNAN)
JUDGE

July 04, 2012
Pankaj*